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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

CHRISTOPHER LEE DUNN,
Plaintiffs,

-vs-

CITY OF BURBANK; DENNIS A. BARLOW;
AND DOES 1 THROUGH 25, INCLUSIVE.

Defendants

CASE NO.: BC 418792

**PLAINTIFF'S NOTICE OF LODGING OF
REPORTER'S TRANSCRIPT AND
ORDERS WITH THE COURT**

Date: January 7, 2009
Time: 8:30 a.m.
Assigned to: Hon. Alan S. Rosenfeld
Dept: 31

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT PLAINTIFF, BY AND THROUGH ITS ATTORNEY OF
RECORD, WILL HEREBY LODGE THE FOLLOWING REPORTER'S TRANSCRIPTS AND
ORDERS, IN DEPARTMENT 31, OF THE ABOVE-REFERENCED COURT:

1. Attached as Exhibit A is the Honorable James C. Chalfant's Order on OSC Re:
Preliminary Injunction;
2. Attached as Exhibit B is Reporter's Transcript of Proceedings of the hearing of October

1 1, 2009 in Department 85 before the Honorable James C. Chalfant.

2

3 Dated: December 22, 2009

LAW OFFICES OF RHEUBAN & GRESEN

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By: Steven M. Cischke
Steven M. Cischke
Attorneys for Plaintiff, Christopher Dunn

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PLAINTIFF'S NOTICE OF LODGING

EXHIBIT A

Defendants City of Burbank ("City") and Burbank Police Department ("Department") move for a preliminary injunction requiring Plaintiffs and their attorneys to return the originals and all copies of various documents in their possession, custody or control which Defendants contend are confidential peace officer personnel records. The court has read and considered the moving papers, the City's supplemental brief,¹ opposition, and replies, and renders the following tentative decision.

A. Statement of the Case

On May 28, 2009, Plaintiffs filed a Complaint against the Department and various individual Defendants alleging various forms of discrimination and harassment.

On August 6, 2009, Defendants applied *ex parte* for a temporary restraining order ("TRO") and order to show cause ("OSC") re: preliminary injunction restraining Plaintiffs from using any documents from the personnel files of third party police officers in Plaintiffs' possession, and ordering Plaintiffs to gather and return to the City all copies of such records. The court issued a protective order requiring that all Department personnel records in Plaintiffs' possession be collected and maintained in a separate location in Plaintiffs' counsel's office and that such records not be used directly or derivatively pending hearing on the OSC. The parties were directed to file supplemental briefs on the issue of whether the records were personnel records protected by privilege and must be returned to the Department.

B. Applicable Law

An injunction is a writ or order requiring a person to refrain from a particular act; it may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court. CCP §525. An injunction may be more completely defined as a writ or order commanding a person either to perform or to refrain from performing a particular act. See Comfort v. Comfort (1941) 17 Cal.2d 736, 741. McDowell v. Watson (1997) 59 Cal.App.4th 1155, 1160.² It is an equitable remedy available generally in the protection or to prevent the invasion of a legal right. Meridian, Ltd. v. City And County of San

¹The supplemental brief filed by the individual third party officers was not served by email on Plaintiffs' counsel as required by the court's August 6 order, and was not received by Plaintiffs' counsel in the regular mail until August 14, 2009. As a result of this violation, the individual officers' supplemental brief has not been considered.

²The courts look to the substance of an injunction to determine whether it is prohibitory or mandatory. Agricultural Labor Relations Bd. v. Superior Court, (1983) 149 Cal.App.3d 709, 713. A mandatory injunction--one that mandates a party to affirmatively act, carries a heavy burden: "[t]he granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." Teachers Ins. & Annuity Assoc. v. Furlotti, (1999) 70 Cal.App.4th 187, 1493.

Francisco, et al. (1939) 13 Cal.2d 424.

The purpose of a preliminary injunction is to preserve the *status quo* pending final resolution upon a trial. See Scaringe v. J.C.C. Enterprises, Inc. (1988) 205 Cal.App.3d 1536. Grothe v. Cortlandt Corp. (1992) 11 Cal.App.4th 1313, 1316; Major v. Miraverde Homeowners Assn. (1992) 7 Cal.App.4th 618, 623. The *status quo* has been defined to mean the last actual peaceable, uncontested status which preceded the pending controversy. Yoorhies v. Greene (1983) 139 Cal.App.3d 989, 995, quoting United Railroads v. Superior Court (1916) 172 Cal. 80, 87. 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396, 1402.

A preliminary injunction is issued after hearing on a noticed motion. The complaint normally must plead injunctive relief. CCP §526(a)(1)-(2).³ Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. See e.g. Ancora-Citronelle Corp. v. Green, 41 Cal.App.3d 146, 150. Injunctive relief may be granted based on a verified complaint only if it contains sufficient evidentiary, not ultimate, facts. See CCP §527(a). For this reason, a pleading alone rarely suffices. Weil & Brown, California Procedure Before Trial, 9:579, 9(11)-21 (The Rutter Group 2007). The burden of proof is on the plaintiff as moving party. O'Connell v. Superior Court, (2006) 141 Cal.App.4th 1452, 1481.

A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. CCP §526(4); Thayer Plymouth Center, Inc. v. Chrysler Motors, (1967) 255 Cal.App.2d 300, 307; Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565. The idea "inadequacy of the legal remedy" or "inadequacy of damages" dates from the time of the early courts of chancery, the idea being that an injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff. Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1565.

In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the reasonable probability that the plaintiff will prevail on the merits at trial (CCP §526(a)(1)), and (2) a balancing of the "irreparable harm" that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. CCP §526(a)(2) 14859 Moorpark Homeowner's Assn. v. VRT Corp. (1998) 63 Cal.App.4th 1396, 1402; Pillsbury, Madison & Sutro v. Schectman (1997) 55 Cal.App.4th 1279, 1283; Davenport v. Blue Cross of California (1997) 52 Cal.App.4th 435, 446; Abrams v. St. Johns Hospital (1994) 25 Cal.App.4th 628, 636. Thus, a preliminary injunction may not issue without some showing of potential entitlement to such relief. Doe v. Wilson (1997) 57 Cal.App.4th 296, 304. The decision to grant a preliminary injunction generally lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. Thornton v. Carlson (1992) 4 Cal.App.4th 1249, 1255.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. See

³However, a court may issue an injunction to maintain the *status quo* without a cause of action in the complaint. CCP §526(a)(3).

C. Analysis

Defendants seek the return of third party police officer personnel records in the possession of Plaintiffs' counsel. Defendants identify the records at issue by Bates number in the Declaration of Tim Stehr.⁴ Both the City and the individual officers⁵ are asserting the privilege and seeking injunctive relief for the release of confidential personnel information and records.

Penal Code section 832.7 provides that peace officer personnel records, and information obtained from these records, are privileged and confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Evidence Code Section 1043. See Penal Code §832.7 ("peace officer personnel records. . . are confidential and shall not be disclosed in any criminal or civil proceeding, except by discovery pursuant to Section 1043 of the Evidence Code).

"Personnel records" are defined as any file maintained under an officer's name by his or her employing agency and containing records relating to any of the following: "(a) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information. (b) Medical history. (c) Election of employee benefits. (d) Employee advancement, appraisal, or discipline. (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties. (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy." Penal Code §832.8.

Section 832.7 protects peace officer personnel records against disclosure except pursuant to the Pitchess procedures of Evidence Code section 1043 and 1045. See City of Santa Cruz v. Superior Court, (1987) 190 Cal.App.3d 1669. It prohibits any disclosure of police personnel records and is not limited to those made in a legal proceeding. See Copley Press v. Superior Court, (2006) 39 Cal.4th 1272, 1284-86. "[T]he privilege against disclosure of official police records is held both by the individual officer involved and by the police department." Davis v. City of Sacramento, (1994) 24 Cal.App.4th 393, 401.

Police personnel records are customarily maintained in either a general personnel file or a separate file containing complaints and reports or findings relating to complaints maintained for five years. Penal Code §832.5. However, despite the literal language of section 832.8 in referring to a personnel "file," the content of the document, not its location, is determinative. Otherwise, a clearly public document such as a newspaper article could be deemed confidential if placed in an otherwise protected personnel file. Therefore, only the types of information

⁴The City's supplemental brief adds two documents, Bates OR 385 and OR 340, to the application.

⁵Officer Anthony Valento has withdrawn the application for injunctive relief brought on his behalf.

enumerated in section 832.8 constitute protected peace officer personnel records. Commission on Peace Officer Standards & Training v. Superior Court, (2007) 42 Cal.4th 278, 290-91. The category of "personal data" in section 832.8 includes the type of information normally supplied by an employee to his or her employer, and does not include information, such as salary arising from the officer's employment with the police department. International Federation of Professional & Technical Engineers, (2007) 42 Cal.4th 319, 342-43.

The City's *ex parte* application sought the return of police personnel records only. In support of that application, the City submitted the Declaration of Tim Stehr, its police chief, who stated that all of the Bates-stamped records in question were confidential police personnel records. This declaration is impermissibly vague and conclusory to constitute sufficient evidence to meet the City's burden of proof that the records in question are police personnel records.

In response to the *ex parte* application, Plaintiffs' counsel reviewed the list of Bates-stamped documents identified by the City as constituting confidential peace officer personnel records, and has determined that many do qualify as personnel records under section 832.8. Those documents have been returned, and all electronic copies destroyed. Plaintiffs contend that the remaining documents are not peace officer personnel records, but are simply business records of the City. Plaintiffs have described the documents and proffered argument as to why those documents need not be returned.

The argue, and the court agrees, that standing alone the following documents by themselves are not police officer personnel records: (1) Memoranda Requesting an Interview with a Witness or Criminal Defendant (OR 400, 401, 502, 1032, 1033, 1134, 1243, 1244, 1345, CG 0400, 0401, 0502). A memorandum requesting a meeting with a witness does not contain personal information about a police officer; (2) DMV Records of a Criminal Defendant (OR 402, 1034, CG 0402) DMV records of a third party are public information. *See Veh. Code* §1808; *Govt. Code* §62353 *et seq*; (3) ICE Transfer Records of a Criminal Defendant (OR 403, 528-529, 531, 1035, 1160-1163, 1246, 1371-1372, CG 0403, 0528-0529) Deportation records of a criminal defendant are not personnel records pursuant to section 832.8; (4) Department of Justice Record of Deportable Alien (OR 404-405, 1036-1037, 1247-1248, 1373-1374, CG 0404-0405, 0530-0531) Documents describing the deportation of a criminal defendant are not police personnel records; (5) Arrest Records, Booking Records, and/or Police Reports Regarding the Arrest of Criminal Defendants (OR 464-493, 503-527, 1096-1125, 1135-1159, 1307-1336, 1346-1370) Arrest records of non-officer suspects contain no personal information about the arresting officers; (6) Pursuit Reports (OR 1026, 1028, 1238-1239, CG 0395-0396, 0464-0493, 0503-0527) A pursuit report contains information regarding the pursuit of a criminal suspect and is not a personnel record; and (7) Business Cards (OR 1245) A business card is not a personnel record.

In reply, the City and the individual officers argue that there is a difference between a non-protected document placed in a personnel file simply to hide it and a document that is attached to an investigative report to as an exhibit or placed in the file to give it context, background, or reference and to lend intelligibility to the documents directly revealing an investigation of the pertinent officer. In support, the City provides a much more detailed Declaration of Tim Stehr identifying the remaining Bates-stamped pages at issue and explaining why the documents are protected.

The vast majority of the otherwise innocent documents at issue are documents that are

referenced and contained in an administrative investigation of third party police officers. A number of them were authored by Plaintiff Rodriguez as an internal affairs investigator. Although standing alone these documents are not personnel records, they are when attached to an investigative report as evidence or an exhibit. It is no different than if the exhibit had been directly quoted within the investigative report. Any risk that the Department will try to hide a document from disclosure in a personnel file is disposed of by the fact that the investigative report refers to and relies on the document. Thus, the above otherwise innocent records are cloaked with police personnel record confidentiality where they were attached and referred to in an investigative report protected by section 832.8. Therefore, Plaintiffs must return the records listed in the Stehr declaration as having been "referenced in and contained in an administrative investigation of a third party."

In addition, the following documents are personnel records: (1) memos from a deputy chief to the chief of police concerning an internal investigation (OR578, OR1210, OR1425, and CG578). Stehr Decl. ¶16; (2) a comment card for a third party police officer is also a personnel record (OR1022, OR1232, CG390). Stehr Decl. ¶17; and (3) the ranking results for promotion to police detective (CG385). Stehr Decl. ¶23. As the City argues, detective rankings are "employee advancement, appraisal...records" under section 832.8 because they contain the ranking of officers for promotion to detective based on test scores and promotability points. The document clearly relates to each officer's employment advancement and appraisal. Even though not located in an individual officer's personnel file, the document is a personnel record of each listed officer.

This does not dispose of all the records at issue. There are some records that are from Plaintiffs' own personnel files, including investigative reports. The City argues that it has the privilege to prevent another person from disclosing official information obtained in confidence by an employee in the course of his or her duties. Ev. Code §1040. It states that it will waive its right to maintain the confidentiality of Plaintiffs' personnel records if they sign a waiver. Whatever the City's rights in this regard, they are outside the scope of this application. Therefore, Plaintiffs are not required to return records from their own personnel files, including internal affairs investigations of them, as part of the application seeking the return of police personnel records under section 832.7.

Finally, there is OR 402, OR1034, and CG402, which are Justice Data Interface Control printouts for police business use only. Stehr Decl. ¶5; (2) While these records may be protected by another privilege (official information), they are not personnel records and are outside the scope of this application.

D. Conclusion

The application for a preliminary injunction requiring the return of documents is granted in part. Except for the documents of which Plaintiffs themselves were the subject and the Justice Data Interface Control printouts, Plaintiffs are ordered to return to the Department the peace officer personnel records identified in the application and destroy any and all electronic copies to the extent they have not already done so.

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

OMAR RODRIGUEZ, ET AL,

PLAINTIFF,

VS.

NO. BC 414 602

BURBANK POLICE DEPARTMENT, ET AL,

DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, OCTOBER 1, 2009

APPEARANCES:

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ORIGINAL

JEANIE CAMPBELL, CSR NO. 11859
OFFICIAL REPORTER

1 CASE NUMBER: BC 414 602
2 CASE NAME: RODRIGUEZ VS. BURBANK PD
3 LOS ANGELES, CALIFORNIA THURSDAY, OCTOBER 1, 2009
4 DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: JEANIE CAMPBELL, CSR NO. 11859
7 TIME: 9:05 A.M.
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12 THE COURT: RODRIGUEZ VERSUS BURBANK POLICE
13 DEPARTMENT, BC 414 602. COUNSEL, YOUR APPEARANCES, PLEASE.

14 MR. GRESSEN: GOOD MORNING, YOUR HONOR. SOLOMON
15 GRESSEN APPEARING ON BEHALF OF PLAINTIFFS AND RESPONDING
16 PARTIES.

17 MR. HAYDEN: GOOD MORNING, YOUR HONOR. ROBERT C.
18 HAYDEN, H-A-Y-D-E-N, OF RHEUBAN AND GRESSEN, ALSO APPEARING
19 ON BEHALF OF PLAINTIFFS AND RESPONDING PARTIES.

20 MS. SAVITT: GOOD MORNING, YOUR HONOR. LINDA SAVITT
21 ON BEHALF OF THE CITY OF BURBANK WHICH IS THE DEFENDANT
22 AND THE MOVING PARTY AS TO THIS MOTION.

23 MR. WILLIAMSON: MICHAEL WILLIAMSON OF STONE
24 BUSAILAH, LLP, ON BEHALF OF [INAUDIBLE]. THOSE ARE PEOPLE
25 WHO ARE IDENTIFIED IN ONE OF THE DOCUMENTS, PROBABLY
26 CLAIMING THAT THEY DON'T WANT TO DISCLOSE.

27 THE COURT: HAVE YOU APPEARED BEFORE?

28 MR. WILLIAMSON: OUR OFFICE HAS APPEARED BEFORE. I

1 BELIEVE THE PREVIOUS DEFENDANTS THAT HAVE BEEN DISMISSED
2 OUT, THEIR NAMES WERE PREVIOUSLY REFERENCED BY THE ATTORNEY
3 OF RECORD PRIOR TO THEIR DISMISSAL.

4 THE COURT: ALL RIGHT. SO THIS IS HERE ON WHAT IS
5 STYLED AS AN EX PARTE APPLICATION FOR AN ORDER OF
6 CONTEMPT, A NEW ORDER FOR CLARIFICATION OF PRELIMINARY
7 INJUNCTION AND AN ORDER TO SHOW CAUSE RE CONTEMPT.

8 I DON'T THINK THAT AT JUST FIRST GLANCE AT
9 THE DOCUMENTS DON'T SUPPORT --

10 MS. SAVITT: YOUR HONOR, I'M SORRY. I'M HAVING A
11 HARD TIME HEARING YOU.

12 THE COURT: AT FIRST GLANCE, THE DOCUMENTS DON'T
13 SUPPORT CONTEMPT BECAUSE I DON'T SEE ANYTHING IN HERE THAT
14 SAYS PLAINTIFFS' COUNSEL ACTUALLY HAS THE DOCUMENTS. THE
15 CONTEMPT AFFIDAVIT FUNCTIONS AS A COMPLAINT AND IS THE
16 SUPPORTING DOCUMENT FOR CONTEMPT. IT HAS TO HAVE ALL THE
17 PERTINENT FACTS NECESSARY TO SUPPORT THE CONTEMPT,
18 INCLUDING THE THRESHOLD FACT THAT THE PLAINTIFFS ARE
19 WITHHOLDING THE DOCUMENTS.

20 I DON'T SEE ANYTHING IN THE AFFIDAVIT THAT
21 SAYS THEY ARE WITHHOLDING THE DOCUMENTS. YOUR ARGUE THAT
22 THEY ARE, BUT THERE'S NOTHING IN THE AFFIDAVIT THAT SAYS
23 THAT, SO YOU COULDN'T GET AN ORDER TO SHOW CAUSE RE CONTEMPT
24 BECAUSE IT WOULD NOT BE SUPPORTED.

25 THE NEXT ISSUE IS THERE ARE TWO DOCUMENTS AT
26 ISSUES AND THE ARGUMENT, THE FIRST IS THE DOCUMENT, A
27 MEMORANDUM CONCERNING -- I'M NOT SURE WHAT IT CONCERNS,
28 FRANKLY. BUT IT SEEMS TO ME THAT YOU'RE IN THE WRONG CASE

1 FOR THE RETURN OF THE DOCUMENTS. THAT IS, THE SAME LAWYER,
2 APPARENTLY, HAS THE DOCUMENT AND REPRESENTS MR. RODRIGUEZ IN
3 THIS CASE, BUT THAT LAWYER HOLDS THE DOCUMENT AS THE
4 COUNSEL FOR ANOTHER PARTY IN ANOTHER LAWSUIT.

5 IT SEEMS TO ME YOU HAVE TO SEEK THE RETURN
6 OF THE DOCUMENTS IN THAT LAWSUIT.

7 NOW, IT MAY BE THAT THAT OTHER PARTY, MR. DUNNE,
8 ACQUIRED THE DOCUMENT FROM MR. RODRIGUEZ, AND MR. RODRIGUEZ
9 TOOK THE DOCUMENT UNLAWFULLY, AND PLAINTIFFS' COUNSEL HAS BEEN
10 ORDERED TO RETURN ALL DOCUMENTS -- LET'S ASSUME HE'S BEEN
11 ORDERED TO RETURN ALL DOCUMENTS IN MR. RODRIGUEZ'
12 POSSESSION OR CONTROL. I DON'T THINK THAT THE DOCUMENT
13 THEY USED IN THIS OTHER LAWSUIT IS TECHNICALLY IN
14 MR. RODRIGUEZ' POSSESSION OR CONTROL; I THINK IT IS
15 TECHNICALLY IN MR. DUNNE'S POSSESSION OR CONTROL.

16 ISN'T THAT RIGHT?

17 MS. SAVITT: NO. NUMBER ONE, I HAVE PROVIDED THE
18 DECLARATION OF CHIEF STEER THAT THE DOCUMENT IS NOT IN
19 MR. DUNNE'S PERSONNEL FILE.

20 THE COURT: THAT IS A SEPARATE ISSUE.

21 MS. SAVITT: I HAVE PROVIDED THE DECLARATION OF
22 MS. PELETIER THAT THEY HAVE PRODUCED NO DOCUMENTS TO
23 MR. DUNNE. I HAVE THE DOCUMENTS HERE, YOUR HONOR. A VERY
24 SIMPLE REVIEW OF IT WILL SHOW IT IS NOT MR. DUNNE'S
25 PERSONNEL RECORD.

26 THE COURT: THAT'S THE MERITS. THE QUESTION IS,
27 ARE YOU IN THE RIGHT LAWSUIT FOR THE RETURN?

28 MS. SAVITT: YES.

1 THE COURT: WHY?

2 MS. SAVITT: BECAUSE THEY PRODUCED THIS DOCUMENT IN
3 THIS CASE AS A DOCUMENT IN THE POSSESSION OF THE PLAINTIFFS.
4 THE CUSTOM AND PRACTICE AT THE POLICE DEPARTMENT IS THAT
5 THIS DOCUMENT GETS SUBMITTED THROUGH THE CHAIN OF COMMAND;
6 THIS DOCUMENT IS ADDRESSED TO THE CHIEF THROUGH THE CHAIN
7 OF COMMAND. WE HAVE BEEN TOLD BY THE AUTHOR OF THE
8 DOCUMENT THAT HE GAVE IT TO OMAR RODRIGUEZ.

9 THE COURT: I CAN ORDER MR. RODRIGUEZ TO RETURN
10 THIS DOCUMENT THAT IS IN HIS POSSESSION OR CONTROL, BUT I
11 DON'T SEE HOW THAT HELPS YOU BECAUSE IF IT IS IN
12 MR. DUNNE'S POSSESSION OR CONTROL, YOU HAVE TO GET IT FROM
13 MR. DUNNE.

14 MS. SAVITT: BUT THERE'S NO EVIDENCE THAT IT IS IN
15 MR. DUNNE'S POSSESSION.

16 THE COURT: THERE IS. THE OPPOSITION SAYS THAT
17 THEY REPRESENT, THAT COUNSEL REPRESENTS MR. DUNNE, AND
18 THAT MR. DUNNE ATTACHED IT AS PART OF HIS COMPLAINT IN
19 MR. DUNNE'S LAWSUIT.

20 MS. SAVITT: THEY'RE USING A DOCUMENT THAT THEY GOT
21 FROM MR. RODRIGUEZ IN THE DUNNE LAWSUIT. THERE IS NO
22 EVIDENCE THAT IT IS FROM MR. DUNNE. THEY ARE USING THAT
23 DOCUMENT, AND YOU ISSUED AN INJUNCTION THAT THEY CAN'T USE
24 IT. THEY ARE USING THAT DOCUMENT IN ANOTHER CASE, AND
25 THEN THEY'RE TRYING TO SAY YOU'RE IN THE WRONG CASE.

26 THE COURT: WELL, WHEN DID THAT HAPPEN?

27 MS. SAVITT: WE CAME INTO THIS COURTROOM AFTER THEY
28 FILED IT AS AN ATTACHMENT TO THE DUNNE COMPLAINT. JUDGE

1 ROSENFELD SEALED THE COMPLAINT FINDING THAT IT WAS
2 PROBABLY A CONFIDENTIAL POLICE DOCUMENT.

3 YOU THEN ISSUED THE TEMPORARY RESTRAINING
4 ORDER THAT THEY COULD NOT USE ANY OF THESE DOCUMENTS THAT
5 WERE PRODUCED BY THE PLAINTIFFS IN OUR CASE FOR ANY
6 PURPOSE INCLUDING --

7 THE COURT: THAT MR. RODRIGUEZ COULDN'T; THAT THE
8 PLAINTIFFS IN THIS LAWSUIT COULDN'T, YES.

9 MS. SAVITT: AND PLAINTIFFS' COUNSEL.

10 THE COURT: AND PLAINTIFFS' COUNSEL, YES.

11 MS. SAVITT: RIGHT. SO PLAINTIFFS' COUNSEL IS NOW
12 USING IT ANOTHER LAWSUIT CLAIMING HE IS WEARING A DIFFERENT
13 HAT. THAT INJUNCTIONS ENJOINS HIM FROM USING IT FOR ANY
14 PURPOSE. YOU EVEN SAID HE CANNOT GIVE IT TO THE FBI. AND
15 THEY ARE USING IT -- THERE'S NO EVIDENCE --

16 THE COURT: OBVIOUSLY INJUNCTIONS ARE PROSPECTIVE
17 IN NATURE. SO ARE YOU SAYING HE HAD ALREADY USED IT IN
18 ANOTHER LAWSUIT?

19 MS. SAVITT: AND IT HAD BEEN SEALED. NOW HE'S
20 REUSING IT IN ANOTHER LAWSUIT.

21 THE COURT: WHAT AM I SUPPOSED TO DO ABOUT THAT?
22 IT SEEMS TO ME YOU'VE GOT TO GO TO THAT LAWSUIT. I CAN'T
23 ORDER HIM TO UNSEAL IT AND WITHDRAW THE DOCUMENT FROM THAT
24 OTHER LAWSUIT.

25 MS. SAVITT: YOU CAN ORDER HIM TO RETURN ANY
26 DOCUMENT, THIS DOCUMENT SPECIFICALLY THAT HE RECEIVED FROM
27 OFFICER RODRIGUEZ, AND I CAN PRETTY MUCH ASSURE YOU --

28 THE COURT: ORDER MR. DUNNE TO RETURN ANY DOCUMENT

1 HE RECEIVED?

2 MS. SAVITT: NO, MR. GRESSEN. AND ONCE MR. GRESSEN
3 IS ORDERED TO RETURN IT, I'M PRETTY SURE HE DOES NOT HAVE
4 IT FROM MR. DUNNE. I CAN'T MAKE A REPRESENTATION BECAUSE
5 I'M NOT HIM, BUT THE SOURCE OF THIS DOCUMENT, THE ONLY WAY
6 THIS DOCUMENT COULD HAVE BEEN RECEIVED BY MR. GRESSEN,
7 QUITE FRANKLY, IS FROM THE CHIEF, WHO DIDN'T GIVE IT TO
8 HIM, OR FROM MR. RODRIGUEZ, BECAUSE THIS DOCUMENT WAS
9 GIVEN TO MR. RODRIGUEZ, AND THEN IT WAS GIVEN TO THE CHIEF
10 THROUGH THE CHAIN OF COMMAND. IT DIDN'T GET IN MR. DUNNE'S
11 PERSONNEL FILES. THERE IS NO EVIDENCE MR. DUNNE EVER HAD
12 ACCESS TO THIS DOCUMENT. IT DOESN'T EVEN RELATE TO
13 MR. DUNNE; IT RELATES TO A THIRD-PARTY OFFICER.

14 I HAVE IT HERE; YOU CAN LOOK AT IT. ALL IT
15 SAYS IS THAT -- THE AUTHOR SAYS, I WAS TOLD I WOULD BE
16 INTERVIEWED IN A CRIMINAL INVESTIGATION OF MR. DUNNE.
17 THAT IS THE ONLY THING IT SAYS ABOUT MR. DUNNE. AND IT
18 GOES ON AND ON AND ON ABOUT THE PERSON WHO TOLD HIM HE WAS
19 GOING TO BE INVESTIGATED.

20 THE COURT: WELL, YOU'RE GOING TO HAVE TO RETRIEVE
21 THE DOCUMENT IN THE OTHER LAWSUIT. I MEAN, I CAN ORDER
22 MR. RODRIGUEZ, MR. RODRIGUEZ' COUNSEL NOT TO MAKE ANY
23 FURTHER USE OF THIS DOCUMENT, WHICH APPARENTLY I HAVE
24 ALREADY ORDERED; BUT I CANNOT ORDER HIM TO WITHDRAW THE
25 DOCUMENT FROM THE LAWSUIT, FROM THIS OTHER LAWSUIT. YOU'RE
26 GOING TO HAVE TO GET THAT ORDER FROM THE OTHER JUDGE.

27 MS. SAVITT: BUT YOU CAN ORDER HIM TO RETURN THE
28 DOCUMENTS HE GOT FROM MR. RODRIGUEZ TO ME.

1 THE COURT: YES, EXCEPT FOR THE ONE THAT IS ON FILE
2 UNDER SEAL. I CAN'T ORDER THAT BE RETURNED.

3 MS. SAVITT: RIGHT. BUT IF YOU ORDER, YOUR HONOR,
4 THIS DOCUMENT IN HIS POSSESSION IN THIS CASE RETURNED TO
5 US, HE WILL NOT BE ABLE TO USE IT IN ANOTHER CASE BECAUSE
6 THE ONLY SOURCE OF IT IS THE RODRIGUEZ CASE.

7 THE COURT: IF THAT WERE TRUE, YOU'LL HAVE TO GET
8 THAT ORDER FROM THE OTHER JUDGE. I CANNOT AND WILL NOT
9 SAY YOU CAN'T USE THE SEALED DOCUMENT IN THAT LAWSUIT.
10 THAT ORDER HAS TO COME FROM THE OTHER JUDGE.

11 MS. SAVITT: BUT CAN'T YOU SAY, YOUR HONOR, THAT IF
12 YOU RECEIVED THAT DOCUMENT FROM MR. RODRIGUEZ, YOU MUST
13 RETURN IT IN THE RODRIGUEZ LAWSUIT, AND YOU CANNOT USE IT
14 FOR ANY PURPOSE IF YOU GOT IT FROM MR. RODRIGUEZ? THEN HE
15 IS GOING TO HAVE TO PROVE THAT HE GOT IT FROM MR. DUNNE.

16 THE COURT: OF COURSE THAT CAN BE SAID. BUT
17 MR. DUNNE IS A PARTY, IS A NECESSARY PARTY TO THAT
18 DETERMINATION.

19 IN OTHER WORDS, LET'S ASSUME HE WAS
20 REPRESENTED BY A DIFFERENT LAWYER, MR. DUNNE, AND HE FILED
21 IT UNDER SEAL IN HIS LAWSUIT, AND I ORDERED MR. RODRIGUEZ
22 AND MR. RODRIGUEZ' COUNSEL TO RETURN THIS MEMO AND NOT
23 MAKE ANY USE OF IT, DIRECT OR INDIRECT. IT IS ALREADY ON
24 FILE UNDER SEAL IN MR. DUNNE'S CASE. I CANNOT ORDER
25 MR. RODRIGUEZ AS HIS ATTORNEY TO RETRIEVE THAT DOCUMENT
26 FROM MR. DUNNE WITHOUT MR. DUNNE HAVING THE RIGHT TO COME
27 IN AND SAY, OH, NO. IT IS MY PERSONNEL FILE RECORD, AND I
28 WANT TO KEEP IT. IT DOESN'T MATTER HOW I GOT IT, IT IS MY

1 PERSONNEL FILE RECORD, AND I'M ENTITLED TO IT.

2 MR. DUNNE HAS THE RIGHT TO BE PRESENT AND
3 TO MAKE THAT ARGUMENT.

4 MS. SAVITT: COULD YOU LOOK AT THE DOCUMENT, YOUR
5 HONOR, AND MAKE A DETERMINATION WHETHER YOU BELIEVE IT IS
6 MR. DUNNE'S PERSONNEL FILE? IT SAYS NOTHING ABOUT
7 MR. DUNNE OTHER THAN A WITNESS WHO HAS BEEN ASKED TO
8 TESTIFY IN MR. DUNNE'S CRIMINAL --

9 THE COURT: I'M ASSUMING IT'S NOT. I DON'T SEE HOW
10 I CAN MAKE AN ORDER AFFECTING MR. DUNNE WITHOUT MR. DUNNE
11 HAVING THE RIGHT TO BE HEARD.

12 MS. SAVITT: BUT YOU CAN ENJOIN MR. GRESEN FROM
13 USING ANY DOCUMENTS RECEIVED BY HIM FROM MR. RODRIGUEZ OR
14 ANY PLAINTIFF IN THIS CASE.

15 MR. GRESEN: THAT'S ASSUMING, YOUR HONOR, THAT YOU
16 CAN EVEN ASK ME WHERE I RECEIVED THE DOCUMENTS WHICH WE
17 BELIEVE IS CONFIDENTIAL. SHE CAN'T ASK FOR A BLANKET ORDER
18 WHICH WOULD THEN REQUIRE ME TO DIVULGE TO HER WHERE I GOT
19 DOCUMENTS. THAT'S ATTORNEY-CLIENT AND WORK-PRODUCT
20 PRIVILEGE INFORMATION. THERE IS CASE LAW, AND I'D LOVE TO
21 BRIEF THAT ISSUE FOR YOU.

22 WHAT SHE IS SEEKING TO DO NOW IS AN END-RUN
23 AROUND RODRIGUEZ. BY FILING IT HERE IN RODRIGUEZ, SHE IS
24 SEEKING TO SILENCE DUNNE. AND BY SAYING THAT I CAN'T USE
25 IT FOR ANY PURPOSE, SHE WANTS US TO AFFECT THE DUNNE CASE
26 WHEN DUNNE IS NOT PRESENT, EXACTLY AS YOUR HONOR HAS
27 INDICATED.

28 THE INQUIRY AS TO WHERE I GOT THE DOCUMENTS

1 WHICH THEY WANT TO CONDUCT IS THE SUBJECT OF A MOTION TO
2 COMPEL TOMORROW BEFORE JUDGE O'DONNELL. SO SHE WANTS TO
3 USE ALL THESE OTHER CASES TO HAVE YOU STEP YOUR FOOT ON IT
4 AND MAKE THE DECISION NOW AND AVOID THE NECESSITY OF
5 HAVING THESE OTHER JUDGES HEAR THE CASE.

6 THE COURT: FIRST OF ALL, I'M NOT GOING TO DO THAT
7 NOW.

8 WHAT I BELIEVE WAS SUPPOSED TO HAPPEN WAS
9 THE PARTIES WERE TO APPLY EX PARTE FOR A BRIEFING SCHEDULE
10 ON ANY DOCUMENT THAT REMAINED IN DISPUTE. WHAT I DON'T
11 UNDERSTAND IS WHY THE PLAINTIFFS DIDN'T DO THAT BECAUSE
12 PLAINTIFF APPARENTLY HAS WITHHELD TWO DOCUMENTS.

13 MS. SAVITT: AND REFUSES TO RETURN THEM, ABSOLUTELY
14 REFUSES TO RETURN THEM IN THE RODRIGUEZ CASE.

15 MR. GRESER: THE MEET-AND-CONFER ENDED LAST FRIDAY;
16 MONDAY WAS YOM KIPPUR. TODAY IS THURSDAY. THAT IS WHY WE
17 HAVEN'T DONE IT, YOUR HONOR.

18 MS. SAVITT: HE HAS REFUSED. YOUR HONOR. MR. GRESER
19 TOLD ME, I REFUSE TO GIVE YOU BACK THESE TWO DOCUMENTS.

20 THE COURT: SO NOW WE SET A BRIEFING SCHEDULE.

21 MS. SAVITT: WE HAVE BRIEFED IT; WE JUST BRIEFED IT
22 FOR YOU HERE. HE PRODUCED IT IN THE OMAR RODRIGUEZ CASE.

23 THE COURT: YOU BRIEFED IT IN A REPLY THAT THEY
24 NEVER HAD AN OPPORTUNITY TO RESPOND TO. NOW YOU'VE BRIEFED
25 IT AGAIN ON AN EX PARTE APPLICATION TO WHICH THEY HAVE HAD
26 NO OPPORTUNITY TO RESPOND. THAT'S WHERE WE STAND.

27 MS. SAVITT: YOUR HONOR, I NEED TO ADDRESS SOMETHING
28 BECAUSE I THINK COUNSEL REALLY MISREPRESENTED TO YOU AT

1 THE LAST HEARING HE RETURNED CERTAIN DOCUMENTS AND SAID I
2 AM WITHHOLDING THESE DOCUMENTS IN A CONFIDENTIAL SEPARATE
3 STATEMENT, AND HE LISTED ALL THE DOCUMENTS, AND HE LISTED
4 WHY HE WAS WITHHOLDING THEM.

5 IN REPLY, WE RESPONDED TO HIS WITHHOLDING AS
6 TO WHY THAT WAS IMPROPER. WE DIDN'T WITHHOLD ANY INFORMATION.
7 NOW I HAVE MET AND CONFERRED --

8 THE COURT: IT'S NOT WITHHOLDING; YOU DIDN'T MAKE
9 YOUR EVIDENTIARY SHOWING IN ANY DETAIL UNTIL YOUR REPLY.

10 MS. SAVITT: WELL, I THINK WE DID BECAUSE WE WENT
11 THROUGH -- WE IDENTIFIED SPECIFICALLY THE DOCUMENTS.

12 THE COURT: I DON'T WANT TO REVISIT THAT BECAUSE I
13 HAVE MADE MY RULING.

14 MS. SAVITT: I UNDERSTAND, BUT HE HAS NOW REFUSED
15 TO RETURN THIS DOCUMENT.

16 THE COURT: RIGHT. NOW YOU BRIEF IT.

17 MS. SAVITT: IT IS A PERSONNEL FILE OF A THIRD-PARTY.

18 THE COURT: I DON'T KNOW THAT.

19 MS. SAVITT: I HAVE IT HERE. YOU CAN DO AN IN
20 CAMERA INSPECTION, YOUR HONOR.

21 THE COURT: NO. NOW IT REALLY SOUNDS LIKE YOU ARE
22 TRYING TO AVOID THIS MOTION THAT IS SET FOR TOMORROW IN
23 JUDGE O'DONNELL'S COURT.

24 MS. SAVITT: NO, THAT HAS NOTHING TO DO WITH THIS.

25 THE COURT: THEN WHY DON'T WE BRIEF THIS?

26 MS. SAVITT: TOMORROW'S MOTION IS TO COMPEL THE
27 DEPOSITIONS OF THE PLAINTIFFS; IT HAS NOTHING TO DO WITH
28 THIS.

1 THE COURT: THEN BRIEF THIS ISSUE. THIS IS NOT --
2 I ORDERED THEM TO SILO THE INFORMATION IN THEIR OFFICE,
3 AND THEY HAVE THESE DOCUMENTS. THEY HAVEN'T RESPONDED ON
4 THE OTHER DOCUMENTS, BY THE WAY.

5 WHAT'S YOUR POSITION ON THE SECOND DOCUMENT?

6 MR. GRESEN: IT IS THE POLICE RANKINGS, WHICH THEY --

7 THE COURT: I KNOW THAT.

8 MR. GRESEN: -- THEY ADMIT THAT IT IS A PERSONNEL
9 RECORD, AND WE BELIEVE IT IS OUR PERSONNEL RECORD. WE'RE
10 HAPPY TO REDACT EVERYONE'S NAME FROM IT, BUT OUR OFFICER --
11 THEY ARE SAYING, NO, THEY WANT IT, AND SO WE'D LIKE TO
12 BRIEF THAT FOR YOU, YOUR HONOR.

13 THE COURT: WHY DIDN'T YOU SAY THAT? YOU DON'T EVEN
14 MENTION IT IN THE OPPOSITION.

15 MR. GRESEN: BECAUSE THE CONTEMPT WAS WHAT I WAS
16 WORRIED ABOUT, YOUR HONOR, AND I WAS VERY CONCERNED THAT
17 THEY WERE GOING TO HAVE AN ORDER SET TO HEAR A CONTEMPT
18 FOR ME FOR THE DUNNE ACTION.

19 MS. SAVITT: YOUR HONOR, THIS IS A RANKING OF TWENTY
20 POLICE OFFICERS WITH THEIR SCORES, PROMOTABILITY
21 ASSESSMENTS --

22 THE COURT: YES, I RECALL THAT. WHAT I DON'T RECALL
23 IS WHAT I SAID ABOUT IT PREVIOUSLY.

24 MS. SAVITT: I CAN TELL YOU WHAT YOU SAID ABOUT IT.
25 COUNSEL REPRESENTED TO YOU IN COURT -- AND I CITED IT IN
26 THE PAPERS -- THAT THE CHIEF GAVE THIS TO HIS CLIENTS. I
27 WENT TO THE CHIEF TO FIND THAT OUT AND THE CHIEF HAD GIVEN
28 YOU A DECLARATION THAT ABSOLUTELY THIS WAS NEVER GIVEN TO.

1 HIM.

2 THE COURT: WHAT DOES IT MATTER HOW IT WAS ACQUIRED?
3 THE ISSUE IS, IS IT A PERSONNEL RECORD OR NOT?

4 MS. SAVITT: IT IS UNDER THE CODE. 832.8.

5 THE COURT: THEN IT HAS TO BE RETURNED. NO MATTER
6 HOW IT WAS ACQUIRED AND WHETHER THE CHIEF GAVE IT TO HIM
7 OR NOT I DON'T THINK IS RELEVANT.

8 MR. GRESEN: BUT IF IT IS A PERSONNEL RECORD, WHOSE?
9 IT HAS OMAR'S NAME ON IT. WHY COULDN'T IT BE HIS
10 PERSONNEL RECORD? WE'RE ENTITLED TO KEEP IT UNDER THE
11 POLICE OFFICERS' BILL OF RIGHTS. THAT WAS THE DICHOTOMY
12 YOU SET IN YOUR RULING ON THE RECORD LAST TIME --

13 THE COURT: I HAVE A VAGUE RECOLLECTION OF WHAT I
14 SAID, AND THAT'S WHAT HAPPENS WHEN YOU COME IN EX PARTE.
15 I DON'T RECALL SPECIFICALLY HOW I RULED. IT DIDN'T SEEM
16 TO ME TO BE A PERSONNEL RECORD.

17 MR. GRESEN: WELL, YOU WANTED US TO BRIEF THE ISSUE
18 WHEN ONE OF OUR CLIENTS IS MENTIONED AND OTHER PEOPLE ARE
19 MENTIONED; THAT IS KIND OF THE ISSUE YOU WANTED US TO BRIEF.
20 WHAT HAPPENS TO A RECORD WHEN IT MENTIONS A LOT OF PEOPLE?
21 IS IT ALL OF THEIR PERSONNEL RECORD, IS IT NONE OF THEIR
22 PERSONNEL RECORD? THAT'S WHY YOU WANTED US TO SET A
23 BRIEFING SCHEDULE TO ADDRESS THAT ISSUE.

24 THE COURT: I DON'T KNOW THAT MENTIONING SOMEONE'S
25 NAME MAKES IT PERSONNEL RECORD; OTHERWISE, EVERY RECORD IN
26 THE POLICE DEPARTMENT IS GOING TO BE A PERSONNEL RECORD.

27 MR. GRESEN: BUT THEY ADMIT THAT IT IS A PERSONNEL
28 RECORD.

1 MS. SAVITT: IT IS A PERSONNEL RECORD UNDER 832.8,
2 WHICH SAID ANY ASSESSMENTS OF PROMOTABILITY OF PERSONNEL
3 RECORDS. THE ISSUE IS, YOUR HONOR --

4 MR. GRESSEN: WHOSE?

5 MS. SAVITT: THE ISSUE IS, YOUR HONOR, HE STOLE IT.
6 IF HE WANTS THIS DOCUMENT, HE HAS TO DO A PITCHESS MOTION
7 FOR THE DOCUMENT.

8 MR. GRESSEN: HE STOLE IT IN 1980, ALLEGEDLY.

9 MS. SAVITT: IT DOESN'T MATTER; WE ARE ENTITLED TO
10 HAVE IT BACK. IT IS TWENTY OFFICERS, THEIR NAMES, THEIR
11 RANKING, THEIR PROMOTABILITY POINTS, THEIR SENIORITY
12 POINTS, THEIR ASSESSMENT OF PROMOTABILITY. AND HE STOLE
13 IT; WE WANT IT BACK. IF HE WANTS THE DOCUMENT, HE HAS TO
14 DO A PITCHESS MOTION FOR THE DOCUMENT BECAUSE IT INVOLVES
15 OTHER OFFICERS. HE REFUSES TO GIVE IT BACK.

16 MR. GRESSEN: WE'RE HAPPY TO BRIEF IT.

17 THE COURT: THAT'S WHAT YOU'RE GOING TO DO IS BRIEF
18 IT. WHAT I ORDERED WAS THAT YOU MEET AND CONFER -- I
19 LOOKED AT THE TRANSCRIPT. I ORDERED THAT YOU MEET AND
20 CONFER AND THAT IF THERE WAS A DISPUTE, THE PLAINTIFFS
21 WOULD APPLY EX PARTE FOR A BRIEFING SCHEDULE.

22 MR. GRESSEN: I DIDN'T HAVE A CHANCE, YOUR HONOR.
23 YOM KIPPUR SHE GAVE ME NOTICE VIA E-MAIL THAT WE WERE --

24 THE COURT: SO NOW YOU'RE GOING TO HAVE A BRIEFING
25 SCHEDULE. THERE ARE TWO DOCUMENTS AT ISSUE. I ONLY NEED
26 TWO BRIEFS; I'LL TAKE THIS AS THE OPENING BRIEF, SO I NEED
27 AN OPPOSITION AND A REPLY.

28 MS. SAVITT: AND IN THE INTERIM, IS HE ENJOINED

1 FROM USING THEM AND/OR DISSEMINATING THEM?

2 THE COURT: HE ALWAYS HAS BEEN, I BELIEVE. ISN'T
3 THAT WHAT YOU SAID?

4 MS. SAVITT: YES. THAT'S WHY HE IS USING IT IN THE
5 DUNNE CASE IS THE CONTEMPT OF THAT --

6 THE COURT: THAT'S A DIFFERENT ISSUE. I SAID
7 RODRIGUEZ AND RODRIGUEZ' -- I MEAN THE PLAINTIFFS IN THIS
8 LAWSUIT AND THEIR LAWYER AS THEIR LAWYER ARE ENJOINED FROM
9 USING THESE DOCUMENTS. THEY ARE SILOED. I CANNOT ENJOIN
10 A PARTY WHO IS NOT BEFORE ME, MR. DUNNE.

11 THAT IS WHY -- NOW, IF HE HAD GIVEN THE
12 DOCUMENT TO AND USED IT IN THE DUNNE LAWSUIT AFTER MY
13 INJUNCTION, THAT WOULD BE A DIFFERENT ISSUE. BUT HAVING
14 USED IT BEFORE, I DON'T FEEL THAT I CAN ENJOIN THE USE IN
15 THAT LAWSUIT WITHOUT MR. DUNNE BEING A PARTY.

16 MS. SAVITT: I UNDERSTAND THAT, BUT HE HAS USED IT
17 SINCE IN THE DUNNE LAWSUIT. THAT'S THE PROBLEM. YOU HAVE
18 ENJOINED HIM FROM USING IT; HE HAS NOW USED IT AGAIN JUST
19 A COUPLE DAYS AGO. THAT'S THE PROBLEM. HE'S NOT SUPPOSED
20 TO USE IT AT ALL.

21 THE COURT: I THINK THAT THIS IS A HAT ISSUE; HE IS
22 WEARING THE DUNNE ATTORNEY HAT WHEN HE IS USING IT, AND I
23 DON'T THINK I CAN DO ANYTHING ABOUT THAT WITHOUT MR. DUNNE
24 AS A PARTY HERE.

25 I'M NOT MAKING ANY ORDER WITH RESPECT TO THE
26 DUNNE LAWSUIT. I THINK I HAVE ORDERED PLAINTIFFS' COUNSEL
27 TO SILO ALL DOCUMENTS PENDING THE OUTCOME OF THIS DISPUTE
28 AS PLAINTIFFS' COUNSEL IN THIS LAWSUIT.

1 MR. GRESEN: AND WE HAVE, YOUR HONOR. YESTERDAY WE
2 RETURNED DOCUMENTS.

3 MS. SAVITT: ABSOLUTELY. OUR MEET-AND-CONFER WAS
4 LARGELY SUCCESSFUL. WE'RE STUCK WITH THESE TWO ISSUES
5 THAT HE'S FLAT-OUT REFUSED. I'M NOT SAYING HE HAS NOT
6 BEEN COOPERATIVE; WE HAVE MET AND CONFERRED AND NARROWED
7 IT WAY DOWN.

8 BUT TO THE EXTENT -- I WANT TO MAKE SURE I
9 UNDERSTAND THIS ORDER. TO THE EXTENT THAT HE OBTAINED
10 THIS DOCUMENT, THIS MEMO IN THE RODRIGUEZ LAWSUIT, HE'S
11 ENJOINED FROM USING IT FOR ANY PURPOSE. CORRECT?

12 MR. GRESEN: I DON'T BELIEVE THAT THAT'S APPROPRIATE
13 LANGUAGE FROM WHERE I GOT IT.

14 MS. SAVITT: AS AN OFFICER OF THE COURT -- MAYBE HE
15 IS NOT GOING TO DISCLOSE IT TO US.

16 THE COURT: SAY THAT AGAIN.

17 MS. SAVITT: TO THE EXTENT HE RECEIVED THIS DOCUMENT
18 FROM OFFICER RODRIGUEZ OR FROM A PLAINTIFF IN THIS LAWSUIT,
19 HE IS ENJOINED FROM USING IT FOR ANY PURPOSE.

20 MR. GRESEN: IN THIS LAWSUIT.

21 MS. SAVITT: FOR ANY PURPOSE. IF HE'S REPRESENTING --

22 THE COURT: HE OBTAINED IT FROM HIS CLIENT,
23 MR. RODRIGUEZ; HE IS SILOED FROM USING IT FOR ANY PURPOSE
24 IN ANY LAWSUIT EXCEPT THE DUNNE LAWSUIT.

25 MR. GRESEN: HOWEVER, I JUST DON'T WANT TO HAVE A
26 HEARING ON WHERE I GOT IT FROM; THAT'S WHY I HAVE A PROBLEM
27 WITH THAT BECAUSE IT IS CONFIDENTIAL WHERE I GOT IT. SO
28 WHEN YOU SAY TO THE EXTENT THAT I GOT IT FROM RODRIGUEZ,

1 AM I NOW GOING TO HAVE TO PUT ON EVIDENCE THAT I DIDN'T
2 GET IT FROM RODRIGUEZ SO I AVOID THE ORDER? THAT IS WHAT
3 IS PROBLEMATIC. I'D LIKE TO BRIEF THE ISSUE FOR YOU, YOUR
4 HONOR, BECAUSE IT IS CONFIDENTIAL. THAT IS THE SAME ISSUE
5 THAT O'DONNELL IS HEARING TOMORROW, AND WE'LL FIND OUT.

6 MS. SAVITT: NO, IT IS NOT. HE IS AN OFFICER OF
7 THE COURT, YOUR HONOR, AND --

8 THE COURT: WAIT A MINUTE. LET'S BE CLEAR. YOU'RE
9 ENJOINED FROM USING IT FOR ANY PURPOSE WHATSOEVER EXCEPT
10 IN THE DUNNE LAWSUIT. I DON'T CARE HOW YOU ACQUIRED IT.

11 MR. GRESER: THANK YOU, YOUR HONOR.

12 MS. SAVITT: BUT IF HE OBTAINED IT ILLEGALLY, WHY
13 CAN HE USE IT IN THE DUNNE LAWSUIT? IF HE OBTAINED IT
14 FROM DUNNE, THAT'S A DIFFERENT STORY. THEN I HAVE TO GO
15 IN AND GET AN INJUNCTION AGAINST DUNNE.

16 THE COURT: DUNNE IS NOT A PARTY HERE. I CANNOT
17 MAKE A RULING THAT AFFECTS MR. DUNNE WITHOUT MR. DUNNE
18 HAVING DUE PROCESS RIGHT OF NOTICE AND AN OPPORTUNITY TO
19 BE HEARD.

20 MS. SAVITT: BUT IT US DOES NOT AFFECT MR. DUNNE.
21 IF MR. DUNNE GAVE IT TO HIM, THEN I AGREE WITH YOU, YOUR
22 HONOR; YOU DON'T HAVE JURISDICTION OVER DUNNE TO SAY HE
23 CAN'T USE IT. BUT IF HE GOT IT FROM OMAR RODRIGUEZ, WHY
24 CAN HE USE IT FOR MR. DUNNE? HE GOT IT ILLEGALLY. IF HE
25 GOT IT FROM OMAR RODRIGUEZ --

26 THE COURT: HE MAY NOT BE ENTITLED TO USE IT FOR
27 MR. DUNNE AT ALL. BUT I CANNOT MAKE THAT RULING WITHOUT
28 MR. DUNNE BEING HERE AND HAVING THE OPPORTUNITY TO BE

1 HEARD ON THAT ISSUE.

2 SO THIS IS A DUE PROCESS ISSUE, NOT AN ISSUE
3 OF WHETHER YOU ARE CORRECT THAT IT CAN'T BE USED FOR ANY
4 PURPOSE INCLUDING MR. DUNNE'S LAWSUIT. YOU MAY BE RIGHT,
5 AND I MIGHT ULTIMATELY MAKE THAT RULING OR THE JUDGE WHO
6 HAS MR. DUNNE'S CASE MIGHT ULTIMATELY MAKE THAT RULING.
7 BUT I CAN'T BE DONE WITHOUT MR. DUNNE BECAUSE IT'S ALREADY
8 BEEN DISTRIBUTED TO MR. DUNNE IN MR. DUNNE'S LAWSUIT. I
9 CAN'T MAKE THAT RULING WITHOUT MR. DUNNE HAVING THE
10 OPPORTUNITY TO BE HEARD.

11 MS. SAVITT: I WOULD EXPECT MR. GRESEN AS AN
12 OFFICER OF THE COURT THAT IF HE GOT THE DOCUMENT FROM
13 MR. DUNNE TO CONTINUE USING IT. IF HE DIDN'T, I WOULD
14 EXPECT HIM TO BE ENJOINED FROM USING IT.

15 HE HAS TO SELF-POLICE ON THIS, YOUR HONOR.
16 HE IS AN OFFICER OF THE COURT. YOU CAN'T TAKE A DOCUMENT,
17 STEAL A DOCUMENT AND THEN SAY I'M WEARING A DIFFERENT HAT;
18 I'M GOING TO USE THIS STOLEN DOCUMENT. MY CLIENT HAS A
19 DUE PROCESS RIGHT TO A STOLEN DOCUMENT IF HE, IN FACT, GOT
20 IT FROM MR. DUNNE --

21 MR. GRESEN: IT IS NOT A STOLEN DOCUMENT. IT IS
22 PART OF HIS PERSONNEL FILE; HE IS ENTITLED TO IT.

23 THE COURT: BUT THE SUSPICION OF THE CITY IS; YOU
24 GOT THE DOCUMENT FROM MR. RODRIGUEZ. THE SUSPICION IS
25 THAT MR. RODRIGUEZ HAS THE DOCUMENT, HE TURNED IT OVER TO
26 HIS LAWYER, AND IT WAS USED IN THE DUNNE LAWSUIT.

27 OKAY. WE'RE GOING AROUND AND AROUND/HERE.
28 IF IT IS A DOCUMENT THAT SHOULD BE RETURNED TO THE POLICE

1 DEPARTMENT, THEN IT SHOULD BE RETURNED BY MR. DUNNE TO THE
2 POLICE DEPARTMENT, JUST LIKE MR. RODRIGUEZ SHOULD RETURN
3 IT, BUT I CAN'T MAKE THAT RULING WITHOUT MR. DUNNE BEING
4 PRESENT. IN THE EYES OF THE LAW, I CANNOT MAKE THAT RULING.
5 YOU HAVE TO SEEK THAT ORDER IN THE DUNNE CASE, NOT HERE.

6 MS. SAVITT: I UNDERSTAND THAT, BUT ALL I'M SAYING
7 IS THAT IF HE GOT IT IN THE RODRIGUEZ CASE, THERE SHOULD
8 BE NO EXCEPTIONS TO THE USE OF THIS DOCUMENT, AND THAT IS
9 VERY SIMPLE; HE CAN SELF-POLICE ON THAT.

10 THE COURT: I'M CERTAINLY MAKING THE ORDER THAT
11 MR. RODRIGUEZ' LAWYER MAY NOT USE IT FOR ANY PURPOSE. I'M
12 NOT MAKING THE ORDER THAT MR. DUNNE'S LAWYER MAY NOT USE
13 IT, AND THAT HAPPENS TO BE ONE AND THE SAME LAWYER. SO IT
14 MAY BE CONFUSING, BUT THAT'S MY ORDER.

15 MS. SAVITT: SO MR. RODRIGUEZ' LAWYER CANNOT GIVE
16 IT TO MR. DUNNE'S LAWYER IF IT CAME FROM MR. RODRIGUEZ.

17 THE COURT: NOT AFTER MY ORDER HE CAN'T. IF HE
18 GAVE IT TO HIM BEFORE, WHICH HE APPARENTLY DID, THAT IS A
19 SEPARATE ISSUE.

20 MR. GRESEN: WE'RE NOT CONCEDED THAT MR. RODRIGUEZ
21 GAVE THIS TO COUNSEL.

22 THE COURT: I KNOW YOU'RE NOT. I'M NOT AT ALL SURE,
23 BY THE WAY, THAT YOU DON'T HAVE TO EXPLAIN HOW YOU
24 ACQUIRED THE DOCUMENT. I'M NOT AT ALL CONFIDENT OF THAT.

25 TELL ME WHEN YOU WANT TO FILE YOUR
26 OPPOSITION, WHEN YOU WANT TO FILE A REPLY AND WHEN DO YOU
27 WANT TO BE HEARD.

28 MR. GRESEN: THREE WEEKS WOULD BE ENOUGH TIME FOR

1 SCHEDULE, CAN WE GET AN E-MAIL --

2 THE COURT: E-MAIL IN LIEU OF HAND-SERVICE?

3 MR. GRESEN: IN LIEU OF HAND-SERVICE PLUS MAIL;
4 E-MAIL PLUS MAIL.

5 MS. SAVITT: E-MAIL IS FINE.

6 THE COURT: NO FOLLOW-UP MAIL?

7 MS. SAVITT: AND FOLLOW-UP MAIL, YES, THAT'S FINE.

8 MR. GRESEN: THANK YOU, YOUR HONOR.

9 THE COURT: YOU'RE WELCOME.

10
11 (THE PROCEEDINGS IN THE ABOVE-ENTITLED.
12 MATTER WERE CONCLUDED AT 9:40 A.M.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA.
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85

HON. JAMES C. CHALFANT, JUDGE

OMAR RODRIGUEZ, ET AL,
PLAINTIFF,

VS.

BURBANK POLICE DEPARTMENT, ET AL,
DEFENDANT.

NO. BC 414 602

REPORTER'S CERTIFICATE

I, JEANIE CAMPBELL, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS
ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH
21, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT
OF THE PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED
CAUSE ON THURSDAY, OCTOBER 1, 2009.

DATED THIS 5TH DAY OF OCTOBER, 2009.


JEANIE CAMPBELL, CSR NO. 11859
OFFICIAL REPORTER

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen and am not a party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino, California 91436.

On December 23, 2009, I served a copy of the following document described as **PLAINTIFF'S NOTICE OF LODGING OF REPORTER'S TRANSCRIPT AND ORDERS WITH THE COURT** on the interested parties in this action as follows:

Kristin A. Pelletier, Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071
FACSIMILE: (213) 236-2700

— **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. mail Postal Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

XX **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

— **BY FACSIMILE:** Based on an agreement of the parties to accept service by facsimile transmission, I faxed the documents to the person(s) at the facsimile numbers listed above. The telephone number of the sending facsimile machine is (818) 815-2737. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error. A copy of that report showing the time of service is attached.

— **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address listed above. My electronic notification address is dj@rglawyers.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A copy of the electronic transmission showing the time of service is attached.

XX **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on December 23, 2009, at Encino, California.

Daphne Johnson

PLAINTIFF'S NOTICE OF LODGING